



DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 19-00001]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review to National Pecan Shellers Association (“NPSA”), Application Number 19-00001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (“OTEA”), issued an Export Trade Certificate of Review to NPSA on October 29, 2019.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) (“the Act”) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR Part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

A summary of the conduct covered by the Export Trade Certificate of Review follows.

EXPORT TRADE ACTIVITIES AND METHODS OF OPERATION

1. Establishment of Pecan Export Trade Council and Designation of Independent Third Party
 - a. NPSA will establish a specially-funded Pecan Export Trade Council (“PETC”), which will operate under the umbrella of NPSA. NPSA will contract with an Independent Third Party to manage and administer PETC. The Independent Third Party will not disclose information obtained from PETC or from a Member to another Member, an entity that is not a Member, and/or NPSA, except as described below and as limited by the Terms and Conditions in the Certificate of Review.
 - b. PETC will provide Export Trade Facilitation Services, including to the Members. PETC’s charter members, and those certified to engage in Export Trade Activities, are the Members listed in Attachment A. An amendment to this Certificate is required to add members to PETC. PETC membership will be open to entities that are not NPSA members, but shall be limited to: (1) exporting U.S. shellers (i.e., entities with a commercial pecan shelling plant); (2) exporting U.S. pecan growers; and (3) exporting U.S. handlers of pecans. NPSA and PETC, once it is established, will not export Products, except as described below and as limited by the Terms and Conditions in the Certificate of Review.
2. Activities that are not transaction-specific

NPSA, acting through PETC, and including by use of Export Intermediaries, may:

- a. Export Sales Prices. Discuss sales prices and other terms of sale prevailing in the Export Markets;
- b. Marketing and Distribution. Conduct marketing and distribution of Products in the Export Markets;
- c. Promotion. Conduct joint promotion of Products in the Export Markets;
- d. Market and Customer Allocation. Allocate geographic areas or countries in the Export Markets and/or customers in the Export Markets among Members;
- e. Refusals to Deal. Refuse to quote prices for Products, or to market or sell Products, to or for any customers in the Export Markets, or any countries or geographical areas in the Export Markets;
- f. Transportation Activities. Negotiate favorable transportation rates (volume discounts) and consolidate shipments to or within the Export Markets;
- g. Exclusive and Nonexclusive Export Intermediaries. Enter into exclusive and nonexclusive agreements appointing one or more Export Intermediaries for the sale of Products with price, territorial, and/or customer restrictions as provided in this section.

3. Transaction-specific activities

- a. For a given transaction or prospective transaction, any or all of the Members may join to bid for the sale of, and to sell, Products to the Export Markets, provided that each Member shall determine, independently of other Members, the quantity of Products the Member will make available

for export. No Member shall be required to export any minimum quantity of Products.

b. For a given transaction or prospective transaction, and where individual Member commitments are required, for the purposes of allocating export quantities or determining price, the amount to be committed to the sale will be determined in the following manner:

i. The participating Member(s) will, without prior consultation, provide to the Independent Third Party the quantity of Products that it commits to the transaction and the price that it seeks.

ii. The Independent Third Party will independently incorporate such information into the joint sales or bid agreement. For the purposes of this provision, and to maintain the confidentiality of the data, “independently” means that the Independent Third Party will not disclose the information obtained from a Member to another Member, to an entity that is not a Member and/or to PETC, except as aggregated and will disclose the aggregated information only to the Members involved in the transaction. Information from individual Members shall not be disclosed by the Independent Third Party to the buyer.

4. Activities involving entities that are not Members

Individual Members may purchase Products from entities that are not Members to fulfill specific obligations in the Export Markets, provided that Members shall make such purchases only on a transaction-by-transaction basis and when the

Members are unable to supply, in a timely manner, the requisite Products at a price competitive under the circumstances. In no event shall a supplier that is not a Member be included in any deliberations concerning any Export Trade Activities.

5. Information Exchange

Subject to section 1 of the Terms and Conditions in the Certificate, NPSA (acting through PETC) and Members may exchange and discuss the following information:

- a. Information about sales and marketing efforts and prevailing market conditions for the Export Markets, including but not limited to activities and opportunities for sales of Products in the Export Markets, selling strategies for the Export Markets, sales for the Export Markets, contract and spot pricing in the Export Markets, projected demand in the Export Markets for Products, customary terms of sale in the Export Markets, prices and availability of Products from entities that are not Members for sale in the Export Markets, and specifications for Products by customers in the Export Markets;
- b. Information about terms and conditions of contracts for sale in the Export Markets to be considered and/or bid on by NPSA acting through PETC;
- c. Information about joint bidding or selling arrangements for the Export Markets;
- d. Information about expenses specific to exporting to and within the Export Markets, including without limitation, expenses related to transportation,

trans- or intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

- e. Information about U.S. and foreign legislation and regulations, including federal marketing order programs, affecting sales for the Export Markets;
- f. Information about the export operations of PETC, including without limitation, information about sales and distribution networks established by NPSA acting through PETC or by Members in the Export Markets;
- g. Information about export customer credit terms and credit history;
- h. Information about completed and current export sales, provided that it is exchanged only when distributed by the Independent Third Party in aggregated and summary form to ensure confidentiality, and does not disclose, directly or by inference, information about completed and current sales by a specific Member.

6. Meetings

PETC and its Members, and where appropriate the Independent Third Party, may meet to engage in the activities described in sections 2-5 above.

The effective date of the Certificate is October 29, 2019.

Dated: November 6, 2019

Joseph Flynn,

Director,

Office of Trade and Economic Analysis,

International Trade Administration,

U.S. Department of Commerce.

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